

April 15, 1954

To His Excellency, the Governor  
and the Honorable Council

Gentlemen:

This office is in receipt of a copy of a memorandum to the Governor and Council concerning land damage awards from Commissioner Merrill under date of April 13, outlining a suggested method of reviewing such awards in light of Laws 1954, chapter 1. The last paragraph of this memorandum indicates that any recommendations the Attorney General's office cares to make in the matter should be submitted by us to be considered by you along with the suggestions of the Commissioner of Public Works and Highways.

Your attention is respectfully invited to the fact that chapter 1 of the Laws of 1954 places upon you the responsibility of review of any award made after the effective date of the chapter. Obviously, the number of awards anticipated being such that actual personal review, seriatim, by Governor and Council is impossible, some system must be devised by you to make your review workable or else the entire highway land damage assessment system is going to bog down in the Governor and Council review to the extent of interfering with orderly anticipated highway construction. The reason for this is that tender and taking cannot take place until after your review.

The Commissioner of Public Works and Highways suggests that the transmission of awards from the highway land damage commissions should be via his office. He suggests that the preliminary review of these awards shall take place by his office with one councilor to represent the Governor and Council in the preliminary investigations. He proposes that in any event any award made by a land damage commission in any given period shall within the period of the next succeeding regular meeting of the Governor and Council be ready for review. (No opinion is expressed by us as to whether this is practically possible in all instances and undoubtedly the review of some awards may take longer than this relatively brief period of time).

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Land damage commissions are not adjuncts of, nor responsible to the Commissioner of Public Works and Highways. They are separate and independent quasi-judicial agencies created by the Legislature and appointed by the Governor and Council for the purpose of assessing damages pursuant to the basic highway law of 1945 (Chapter 183). It is upon their judgment that the initial award figure is reached. If members of the commission making awards wish to be present at such times as the Governor and Council review their awards, that decision is up to the commission members and would provide firsthand information for the Governor and Council. It is believed that any proposed regulation or resolution purporting to limit the attendance of the commission to one commissioner, depending upon the will of the councilor from the district in which the taking occurs, would be improper.

It may be that it makes no difference in law that awards from commissions should be channelled to you through the Commissioner of Public Works and Highways rather than first being reported to you and by you reviewed with the assistance and advice of the Commissioner of Public Works and Highways. Nevertheless, it is believed to be proper to stress at this stage of preliminary proceedings that the responsibility for the review has been placed by the Legislature squarely upon the Governor and Council, that it is non-delegable, and that unless the Governor and Council wish merely to ratify the recommendations of the Commissioner of Public Works and Highways it will be unavoidably necessary that at least one member of the Governor and Council personally go over the details of each award and that a majority of the Governor and Council shall approve each and every award in all instances, or - disapproving same - set a new figure as provided by Laws 1954, c. 1.

The preparation of an actual resolution to handle the procedure in these cases is a relatively simply administrative task. It can be done in a matter of minutes, depending upon what - after conference - is your desire. It is not believed possible to put the reference in the form of resolution until such time at the meeting on Thursday, April 15, as the manner is specified by you in which you propose to handle the administration of your non-delegable responsibility in these cases.

Respectfully,

George F. Nelson  
Assistant Attorney General

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